

Selby's estate, allotted to John Cross and Jemima his wife, is to be paid to Jemima Cross, who has survived John Cross, inasmuch as it was not received, or assigned, or applied by him in his lifetime. Having been the purchaser, if he had settled up the other parts, he might have settled his proportion with the trustee by discount, or possibly might have settled that part only with him. The case must now be considered, as to her right, in the same manner as if any other person had been the purchaser. *Jones v. Jones*, ante, 454. But the trustee, in paying the parts allotted under the orders of the 1st and 29th of April, 1819, must pay only a rate or proportion to each, according to the net sum received from the sale of J. Cross' real estate, until he recovers the balance on his bond. The present trustee is allowed one-third of the commissions of 182 dollars, paying two-thirds to the representatives of T. Sellman."

* Two of the bonds which had been taken from Armiger, after several partial payments on them, were, on the 28th of **522** December, 1824, by James Iglehart, as trustee for the sale of the real estate of John Cross deceased, assigned to John S. Selby one of the heirs of the late Joseph Selby, and to whom a portion of his estate had been awarded by the auditor's report, and the order thereon of the 1st of April, 1818. And, by Selby, these bonds were assigned to Robert S. Bryan; and, by him assigned to William McParlan. Nicholas J. Watkins and John S. Watkins undertook to guaranty the payment of these bonds. Upon all which this bill was filed.

It was urged, that the equitable lien held by the Court, arising from the sale under its decree, or by the late Thomas Sellman and his successor, as trustee under the Act of Assembly, was assignable in its nature; that it has been assigned; that it was necessarily associated with the bonds given by the purchaser Armiger, and his sureties, and virtually passed along with the assignment of them from Iglehart to Selby, to Bryan and to McParlan.

An equitable lien is one of a very peculiar character. It is not like the common law lien of factors, innkeepers and others, associated with and entirely dependent upon the actual possession of the property on which it is a tie; it is not like a general judicial lien, which springs into existence in favor of a party who obtains a judgment, which enables him to take the lands of the defendant in execution, and continues as an incident to such unsatisfied judgment to which the statute has expressly made all the lands of the defendant liable; it is not like the lien of the State upon the property of its debtor, founded as well on positive enactment as on principles of common law, by which the interests of individuals are postponed in favor of those of the public; it is not precisely of the nature of the lien given by the civil law to those called